

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Competitive Product Prices  
Priority Mail Express & Priority Mail  
Priority Mail Express & Priority Mail Contract 122

Docket No. MC2021-60

Competitive Product Prices  
Priority Mail Express & Priority Mail Contract 122  
(MC2021-60)  
Negotiated Service Agreement

Docket No. CP2021-62

PUBLIC REPRESENTATIVE COMMENTS ON POSTAL SERVICE REQUEST  
TO ADD PRIORITY MAIL EXPRESS & PRIORITY MAIL CONTRACT 122  
TO COMPETITIVE PRODUCT LIST

(January 5, 2021)

The Public Representative hereby provides comments pursuant to the Commission's Notice Initiating Docket(s).<sup>1</sup> In that Notice, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Request to add Priority Mail Express & Priority Mail Contract 122 to the competitive product list.<sup>2</sup>

The Postal Service's Request includes a statement of supporting justification, a certification of compliance with 39 U.S.C. § 3633(a), a public (redacted) version of Governors' Decision No. 19-1<sup>3</sup> and related analysis, a public version of Priority Mail Express & Priority Mail shipping service Contract 122, and proposed changes to the Mail Classification Schedule competitive product list with the addition underlined. The

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<sup>1</sup> Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, December 29, 2020 (Notice).

<sup>2</sup> USPS Request to Add Priority Mail Express & Priority Mail Contract 122 to Competitive Product List and Notice of Filing Materials Under Seal, December 28, 2020 (Request).

<sup>3</sup> Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates (Governors' Decision No.19-1), February 7, 2019. See Request, Attachment A.

Postal Service also filed (under seal) the unredacted Governors' Decision No. 19-1, the unredacted contract related to the proposed new product, and supporting financial data.

According to the Postal Service, Priority Mail Express & Priority Mail Contract 122 is a competitive product "not of general applicability within the meaning of 39 U.S.C. § 3632(b)(3)." Request at 1. The effective date of the instant contract is three business days following the day on which the Commission issues all necessary regulatory approval. Request, Attachment B at 9. The contract is scheduled to expire March 31, 2024, subject to early termination provisions and other terms and conditions. *Id.*

## COMMENTS

The Public Representative has reviewed the Postal Service's Request, including the Statement of Supporting Justification, as well as the contract and financial model filed under seal with the Request. Based upon that review, the Public Representative concludes that Priority Mail Express & Priority Mail Contract 122 should be categorized as a competitive product and added to the competitive product list. In addition, it appears that the instant contract should generate sufficient revenues to cover costs in its first year, and thereby satisfy the requirements of 39 U.S.C. § 3633(a) during the first year.

*Product List Assignment.* Pursuant to 39 U.S.C. § 3642, the Postal Service requests that Priority Mail Express & Priority Mail Contract 122 be added to the competitive product list. 39 U.S.C. § 3642 requires the Commission to consider whether "the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products." 39 U.S.C. § 3642(b)(1). Products over which the Postal Service exercises such powers are categorized as market dominant while all others are categorized as competitive.

The Postal Service makes a number of assertions that address the considerations of section 3642(b)(1). Request, Attachment D at 2. These assertions appear reasonable. Based upon these assertions, the Public Representative concludes

that the Postal Service's Request to add Priority Mail Express & Priority Mail Contract 122 to the competitive product is appropriate.

*Requirements of 39 U.S.C. § 3633.* Pursuant to 39 U.S.C. § 3633(a), the Postal Service's rates for competitive products must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial model and the contract filed under seal with the Request, it appears that the negotiated prices should generate sufficient revenues to cover costs during the first year of the contract, and therefore meet the requirements of 39 U.S.C. § 3633(a) during the first year.

As noted above, the instant contract is expected to remain in effect until March 31, 2024. The contract includes a mechanism for annual adjustment of prices, which should help maintain the contract's ability to meet the requirements of 39 U.S.C. § 3633(a) over the life of the contract. Request, Attachment B at 7-8. The Commission will have an opportunity to review the revenue, cost and volume data for Priority Mail Express & Priority Mail Contract 122 in the future Annual Compliance Determination (ACD) reports.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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